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May 30, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 27, 2005

Case Number: TSO-0242

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

**I. APPLICABLE REGULATIONS**

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under these regulations, an individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id. See generally Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990) (strong presumption against the issuance of a security clearance).

If a question concerning an individual's eligibility for an access authorization cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9(c). The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. 10 C.F.R. § 710.21(b)(3). The burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e. that access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

## II. BACKGROUND

The Individual has been employed by a contractor at a DOE facility in a position which requires him to have an access authorization. The Individual was arrested for Driving While Intoxicated (DWI) in March 2004 and reported his arrest to the local security office (LSO).<sup>1</sup> The LSO subsequently conducted a Personnel Security Interview (PSI) with the Individual in July 2004 to inquire about the Individual's recent DWI arrest. Because the security concerns were not resolved by the PSI, the Individual was referred to a DOE consultant-psychiatrist (the Psychiatrist) for an evaluation concerning his alcohol consumption. The Psychiatrist interviewed the Individual and, in October 2004, issued a psychiatric evaluation report.

In her October 2004 report, the Psychiatrist determined that the Individual suffered from Alcohol Dependence (in early full remission). DOE Ex. 10 at 13. The Psychiatrist indicated that the Individual's problem with alcohol was a condition which caused or may cause a significant defect in judgment or reliability. *Id.* While stating that the Individual was in an early stage of recovery, the Psychiatrist noted that the Individual also suffered from other psychological issues such as unresolved bereavement, problems with his family and low self-esteem that should be explored by a qualified psychotherapist. DOE Ex. 10 at 13. She stated that adequate evidence of rehabilitation or reformation could be demonstrated by abstinence from alcohol, participation in the Employee Assistance Program (EAP) for six months past the date of the report. This program would consist of attendance at Alcoholics Anonymous (AA) meetings at least two times a week and attending a weekly aftercare group. She also recommended that the Individual receive individual counseling to address non-alcohol-related psychological issues. DOE Ex. 10 at 13.

In March 2005, the DOE informed the Individual that the Psychiatrist's report, taken together with the Individual's 2004 DWI arrest and other alcohol-related traffic arrests, constituted derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(h) and (j) (Criteria H and J). March 3, 2005 letter from Manager, Personnel Security Division, to Individual (Notification Letter). The DOE also cited the Individual's failure to report a July 2002 arrest for public intoxication to the LSO or to list that arrest on a Questionnaire for Sensitive Position (QNSP) dated May 4, 2004 as derogatory information under 10 C.F.R. § 710.8(l) (Criterion L). Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

A hearing was held in this matter. At the hearing, the Individual was represented by counsel. The Individual offered his own testimony, as well as that of his sister, his mother, his Alcoholics Anonymous (AA) sponsor, a co-worker, his supervisor at work, a friend who is participating in AA with him and his psychologist (Psychologist). The local DOE office presented one witness, the Psychiatrist.

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<sup>1</sup> In addition to the 2004 arrest, the record also indicates that the Individual had been arrested in 2002, 1994 and 1989, for various alcohol-related offenses. *See* DOE Exhibit (Ex.) 31 at 8, 45, 55, 65.

### III. THE HEARING

The Individual did not dispute the matters giving rise to the Notification Letter. He contends that the security concerns raised by his alcohol dependence and the Criteria L derogatory information have been mitigated by his rehabilitation from his alcohol problem.

#### A. The Individual's sister and mother

The Individual's sister testified that shortly after his arrest for DWI in March 2004, she noticed that the Individual began to participate in an intensive treatment program for excessive alcohol use. Hearing Transcript (Tr.) at 13. The Individual's entire family supported his decision to seek treatment and was happy over this decision. Tr. at 14. She believes that the Individual is much happier since beginning treatment and is more open to others. Tr. at 14-15. She has not seen any evidence that he has consumed alcoholic beverages since March 2004. Tr. at 16. She believes that the Individual is an honest and responsible person. Tr. at 17.

The Individual's mother testified that the Individual seemed to enjoy going to the meetings associated with his treatment program. Tr. at 48. Since the Individual has stopped consuming alcohol, the Individual is more focused and is open and honest. Tr. at 51, 53.

#### B. The Individual's Sponsor

The Individual's Alcoholics Anonymous (AA) sponsor testified that he met the Individual sometime in March 2004 when the Individual began to attend AA meetings. Tr. at 29. He worked with the Individual from March 2005 to October 2005, on the twelve steps of the AA's recovery program.<sup>2</sup> Tr. at 28. Over this period he and the Individual worked on assignments for each of the twelve steps in order to grasp the full meaning of each step. Tr. at 28. The Sponsor noted that, during his involvement with AA, the Individual had developed a real commitment to maintaining his sobriety and became more open with others as his involvement grew in AA. Tr. at 32. The Individual fully participated in AA discussion meetings. Tr. at 33. Affirming the Individual's sound foundation to maintain his sobriety, the Sponsor testified

I'm going to kind of reiterate something, but, like I said, most people don't complete -- most people never get past step four, and the majority come in and out and never commit to it, and those that do commit -- you know, few get past, you know, step four or five, and I think that anybody who is committed enough to spend seven months working them and completing all twelve steps is just -- you know, just the benefit of the program is you're going to have a better foundation and you're going to be a lot less likely to drink simply because you covered all twelve steps. I mean, that is the purpose of those steps.

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<sup>2</sup> The 12 steps in AA are a series of contemplative and other activities which an individual works through to obtain recovery from alcoholism. Tr. 40-41. For example, Step Four requires an individual to make a moral inventory of himself. Step Five requires the individual to discuss that inventory with another person. Tr. 43.

Tr. at 33-34. The Sponsor also believed that if the Individual was in a situation where he would be tempted to resume consuming alcohol, he would first call him or his other friends at the AA group he currently attends. Tr. at 34-35.

### **C. The Individual's Supervisor and a Co-worker**

The Individual's co-worker has known the Individual for four years. Tr. at 60. The Individual shared with her the fact that he had been arrested in 2004 for DWI and that he was attending AA. Tr. at 61. The co-worker has noticed that since receiving treatment for his alcohol problem he has seemed happier and more relaxed. Tr. at 62-63. She also observed that the Individual no longer talks about going to bars on the weekend but instead spends his weekends at home or going to AA meetings. Tr. at 63-64. She believes that the Individual is honest and reliable and that no one at work has questioned his honesty or reliability. Tr. at 64-67.

The Individual's supervisor has known the Individual since the 1990's. Tr. at 75. She has observed the Individual making changes in his life since his arrest for the 2004 DWI. Tr. at 77. The supervisor noted his more open attitude and his willingness to personally purchase computer software so that he could still contribute at work despite the suspension of his clearance. Tr. at 77, 80. The supervisor stated that his work performance was good and that his attitude and mood has improved since his 2004 arrest. Tr. at 80-81. She also believed that the Individual was an honest and reliable person. Tr. at 83-84.

### **D. The Individual's Friend**

The Individual's friend has known the Individual for 10 years. Tr. at 90. Their relationship became closer when the Individual's friend began to attend the same intensive outpatient program that the Individual had attended. Tr. at 90, 92. Both also attend the same AA meeting group. Tr. at 92. He noted that the Individual has a humble attitude which would enable him to ask for help from his friends or AA group. Tr. at 94. He believes that the Individual is much more at peace with himself and is happy with his new way of life. Tr. at 95. He also believes that, because of his friendship with the Individual, he would be able to detect if the Individual had resumed consuming alcohol. Tr. at 96-97. In the past two years before the date of this hearing he has observed nothing that would indicate that the Individual has consumed alcohol. Tr. at 97.

### **E. The Individual**

The Individual testified that after his last arrest in March 2004 he promptly reported the arrest to the LSO. Tr. at 120. He realized he had a problem with his alcohol consumption and sought the advice of the facility's medical staff. Tr. at 120. The staff referred the Individual to the Employee Assistance Program. Tr. at 120. He then immediately entered the EAP's Intensive Outpatient Program (IOP). Tr. at 120. The IOP was a 50 hour program in which the Individual attended sessions for four nights (two and one-half hours per session) per week for five weeks. Through this education program the Individual realized that he was an alcoholic. Tr. at 121. After completing this program, the Individual agreed to implement the IOP's recommendation that he attend 90 meetings with AA or his counselor in 90 days. The Individual completed that

obligation in 72 days. Tr. at 121-22. He now attends AA meetings at least twice a week, on Fridays and Saturdays, the very days of the week he used to go to clubs and consume alcohol. Tr. at 123. He has finished working through the AA 12 steps and is currently concentrating on the maintenance steps of AA's program. Tr. at 130. He also attends the EAP aftercare program once a week. Tr. at 122.

In response to his problems with anxiety and depression, the Individual testified that he began to see his Psychologist. Further, when he received a copy of the Psychiatrist's report he also sought treatment from a psychiatrist who evaluated him. He continues to see this psychiatrist but has not been prescribed any medication for his anxiety and depression problems. Tr. at 129, 139-40. He does not feel depressed now and even if he does not get his clearance back, he is resolved not to consume alcohol again. The Individual asserted that consuming alcohol would only make his problems worse. Tr. at 140.

Regarding his failure to report his July 2002 arrest to the local security office, the Individual stated, "I think I was just being stupid and scared and trying to hide my drinking, how much I was drinking . . . probably thought I might get fired." Tr. at 141. In response to a question concerning why he had not admitted his prior marijuana use in a 1988 Questionnaire for Sensitive Position (QNSP), an incident not listed in the notification letter, he responded that he did not remember the specific question on that form from 16 years ago and had no explanation why he answered incorrectly. Tr. 142-43; DOE Ex. 10 at p. 7; DOE Ex. 28 at p.3.<sup>3</sup> He did note that when he had his interview with the Psychiatrist he voluntarily told the truth about his past drug involvement. Tr. at 145.

## **F. The Psychologist**

The Individual's Psychologist possesses a master's degree in Psychology and is a licensed professional counselor. Tr. at 150. Although he had initially seen the Individual a few times while he was participating in the EAP and IOP programs, the Psychologist started to see the Individual regularly beginning in the summer of 2004. Tr. at 153-54. At first he had weekly sessions with the Individual but now has tapered off the frequency of visits to once every six weeks. Tr. at 153-54. He identified the Individual as having problems with depression, anxiety and low self-esteem in addition to his alcohol problem. Tr. at 154. During his sessions with the Individual, the Psychologist monitored the Individual's participation in AA and his other alcohol treatment programs. Tr. at 163-66. Using as a guide the treatment and abstinence criteria that the Psychiatrist enumerated in her report, the Psychologist testified that the Individual showed adequate evidence of rehabilitation from his alcohol problem. Tr. at 168. He also opined that he believed that the probability of the Individual relapsing would be low -- approximately 30 percent or less. Tr. at 182.

While initially most of his therapeutic efforts were directed to the Individual's alcohol problem, currently most of their sessions focus primarily on his depression/anxiety and self-esteem issues. Tr. at 155. In their initial sessions they discussed the Individual's depression resulting from the DWI arrests and the suspension of his clearance. Tr. at 155-56. Later they discussed the

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<sup>3</sup> The fact that the Individual had smoked marijuana in the past was disclosed in the report the Psychiatrist issued concerning the Individual. DOE Ex. 10 at 7.

Individual's issues with his divorce, his post-divorce relationship, and various childhood issues. As the sessions continued, the Psychologist taught the Individual exercises to help him with his anxiety as well as coping skills to deal with his depression. Tr. at 156. As the Individual continued counseling and the AA meetings, the Psychologist observed that the Individual's depression and anxiety lessened. Tr. at 156. As of the date of the hearing, the Psychologist believes that the Individual has mastered adequate coping skills to deal with anxiety and depression. Tr. at 159.

Regarding the Individual's earlier lack of candor, the Psychologist testified that the Individual's alcohol dependency problem plus his basic passive and quiet personality played a factor in his failure to report his 2002 arrest and failure to report he had previously used marijuana on a 1988 QNSP. Tr. at 170. He confirmed that a problem for people suffering from alcohol dependence is honesty concerning their alcohol problem. Tr. at 169. He believes that the Individual has been honest and open regarding everything he has asked of the Individual while treating him. Tr. at 171. The Psychologist, based on his observation of the Individual during therapy, did not believe that the Individual had any type of personality defect that would affect his honesty and judgment. Tr. at 171.

#### **G. The Psychiatrist**

The Psychiatrist gave testimony after listening to all the testimony at the hearing. She testified that she believes that the Individual has shown adequate evidence of rehabilitation and reformation from his alcohol dependency problem and has met all of the treatment recommendations she made in her report. Tr. at 188. She estimated the Individual's chance for relapsing as "low" which she defines as a probability of relapse from 10 to 50 percent. Tr. at 196-97.

With regard to the question concerning the Individual's honesty and trustworthiness, the Psychiatrist believed she was especially competent to offer an opinion since she has lectured on the human behavior of "malingering." Tr. at 189. She went on to testify that the Individual's failure to report the 2002 arrest was a product of the Individual's alcohol dependence and not a characterological defect. Tr. at 190-91. The failure to mention his prior use of marijuana in his 1988 QNSP was a result of carelessness due to a lack of concentration produced by the Individual's depressive symptoms related to his then recent divorce. Tr. at 191. Her belief as to the Individual's honesty was supported by the fact that the Individual provided her with any information she requested even when he was not required to do so and in fact volunteered sensitive information such as the private diary he kept as he worked through the AA steps. Tr. at 193-94.

#### **IV. STANDARD OF REVIEW**

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization

to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” *See* 10 C.F.R. § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

## V. ANALYSIS

### A. Security Concerns

The derogatory information concerning Criteria H and J centers on the Individual’s alcohol problem. Criterion H concerns conduct tending to show that the Individual has “an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J concerns conduct indicating that the Individual has “been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Criterion L references information that tends to show that the individual “is not honest, reliable, or trustworthy.” 10 C.F.R. § 710.8(l).

It is beyond dispute that an individual suffering from an alcohol problem raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243, 27 DOE ¶ 82,808 (2002)*. Given the Psychiatrist’s finding that the Individual suffered from alcohol dependence, the local security office had more than sufficient grounds to invoke Criteria H and J. With regard to Criterion L, the record is undisputed that the Individual failed to report the 2002 arrest to the local security office or list the arrest in his 2004 QNSP. The Individual’s failure to report this arrest raises significant security concerns about his reliability and judgment. Thus, the only issue remaining is whether these security concerns have been resolved.

### B. Mitigating Factors

Almost all of the security concerns raised in this case involve the Individual’s alcohol dependence problem. The Individual asserts that these concerns have been mitigated by the fact he has rehabilitated himself from his alcohol dependency. The record indicates that the Individual has been abstinent from alcohol for approximately two years as of the date of this hearing. *See Tr.* at 131-32 (Individual’s sobriety date March 2004). More importantly the testimony in this case leads me to conclude that the Individual has made fundamental changes to his life. His family members have confirmed the Individual’s new openness in dealing with issues in his life. The Individual has also demonstrated a willingness to accept that he has an alcohol problem. His aggressive approach in seeking treatment and exceeding the recommended treatment program testifies to his desire to overcome this illness. Further, I am impressed with

the quality of his participation in AA as testified to by his sponsor and by his friend. The Individual's participation in AA has given him yet another support system that will serve him well as he continues to refrain from consuming alcohol.

I also found the testimony of the Psychiatrist and the Psychologist persuasive on the issue of whether the Individual is medically rehabilitated from his alcohol dependence. Both experts concur on the appropriateness of the Psychiatrist's treatment recommendations. Both experts have concluded that the Individual has fulfilled those recommendations. However, an expert's finding that a person has shown adequate evidence of rehabilitation and reformation from an alcohol problem is not in itself solely determinative as to whether the associated security concerns have been resolved. *Personnel Security Hearing, Case No. TSO-0209, slip op. at 6-7* (May 15, 2006). A key component in the determination of whether the Individual has mitigated the security concerns raised by his alcohol dependence is an assessment of the likelihood that the individual will relapse and again become a security vulnerability. The experts in this case have given me figures ranging from 10 percent to 50 percent. After reviewing all the evidence in this case regarding the Individual's commitment to change and his support systems I believe that the risk of relapse is at the lower end of this spectrum. As such, I find that the Individual's rehabilitation is sufficient to mitigate the security concerns raised by the Individual's diagnosis of alcohol dependency. Consequently the concerns raised by the Criteria H and J derogatory information have been mitigated.

With regard to the Criterion L concerns, I believe that the incidents outlined in the Notification Letter – the failure to report the 2002 arrest for public intoxication and list that arrest in the May 2004 QNSP – are intimately connected to his alcohol dependence problem. The testimony of the Psychiatrist on this point supports this finding. Each of these incidents was related to his excess alcohol consumption and his fear of being discovered. With his successful rehabilitation this specific motivation for his lack of candor is negated. I must however mention that yet another incident of unreliability, the failure to report marijuana use in a 1988 QNSP (derogatory information not listed in the Notification Letter), is not explained away by the Individual's alcohol problem. Nevertheless, this is a relatively isolated event that occurred some 18 years ago. I believe that the Individual's failure to report his marijuana use was related to his depression related to his divorce. His depressive problems have been addressed by the counseling he has received from his Psychologist and by his evaluation by his psychiatrist for depression. My evaluation of the Individual's demeanor while testifying and the testimony of his family members, friends and the experts leads me to find that the Individual has made a fundamental change in his life and that his character is sufficiently honest and reliable to merit restoration of his clearance.

## VI. CONCLUSION

As explained above, I find that the security concerns related to the Individual's prior history of alcohol misuse (Criteria H and J derogatory information) have been mitigated. Further, I find that the reliability concerns (Criterion L derogatory information) have also been mitigated. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: May 30, 2006